

#### **IC 8-1-32.4**

##### **Chapter 32.4. Telecommunications Providers of Last Resort**

#### **IC 8-1-32.4-1**

##### **Application of definitions**

Sec. 1. Except as otherwise provided, the definitions in IC 8-1-2.6 apply throughout this chapter.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-2**

##### **"Approved alternative technology"**

Sec. 2. As used in this chapter, "approved alternative technology" refers to any technology that:

- (1) offers service and functionality comparable to that provided through an exiting provider's facilities, as determined by the commission;
- (2) may include a technology that does not require the use of any public right-of-way; and
- (3) is approved by the commission for deployment in a particular service area.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-3**

##### **"Basic telecommunications service"**

Sec. 3. As used in this chapter, "basic telecommunications service" has the meaning set forth in IC 8-1-2.6-0.1.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-4**

##### **"Exiting provider"**

Sec. 4. As used in this chapter, "exiting provider" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission;
- (2) is the predominant local exchange carrier in a defined geographic area and provides telecommunications service using the provider's own facilities; and
- (3) ceases operation in all or part of the service area covered by the certificate of territorial authority.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-5**

##### **"Facilities based local exchange carrier"**

Sec. 5. As used in this chapter, "facilities based local exchange carrier" means a local exchange carrier that provides local exchange service:

- (1) exclusively over facilities owned or leased by the carrier; or
- (2) predominantly over facilities owned or leased by the carrier, in combination with the resale of the telecommunications service (as defined in 47 U.S.C. 153(46)) of another carrier.

*As added by P.L.27-2006, SEC.54.*

**IC 8-1-32.4-6**

**"Incumbent local exchange carrier"**

Sec. 6. As used in this chapter, "incumbent local exchange carrier" has the meaning set forth in 47 U.S.C. 251(h).

*As added by P.L.27-2006, SEC.54.*

**IC 8-1-32.4-7**

**"Local exchange carrier"**

Sec. 7. As used in this chapter, "local exchange carrier" has the meaning set forth in 47 U.S.C. 153(26).

*As added by P.L.27-2006, SEC.54.*

**IC 8-1-32.4-8**

**"Local exchange service"**

Sec. 8. As used in this chapter, "local exchange service" means the provision of telephone exchange service (as defined in 47 U.S.C. 153(47)) or exchange access (as defined in 47 U.S.C. 153(16)).

*As added by P.L.27-2006, SEC.54.*

**IC 8-1-32.4-9**

**"Provider of last resort"**

Sec. 9. As used in this chapter, "provider of last resort" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission; and
- (2) is required to offer local exchange service throughout a defined geographic area.

*As added by P.L.27-2006, SEC.54.*

**IC 8-1-32.4-10**

**"Successor provider"**

Sec. 10. As used in this chapter, "successor provider" means a provider that:

- (1) holds a certificate of territorial authority issued by the commission; and
- (2) is, or is designated to become, the provider of last resort for a defined geographic area previously served by an exiting provider.

*As added by P.L.27-2006, SEC.54.*

**IC 8-1-32.4-11**

**Obligations of incumbent local exchange carrier as provider of last resort; satisfaction of obligations using any available technology**

Sec. 11. Except as provided in:

- (1) IC 8-1-32.6-8;
- (2) section 13 of this chapter; or
- (3) section 16 of this chapter;

an incumbent local exchange carrier has the obligations of the

provider of last resort. An incumbent local exchange carrier may meet the carrier's obligations under this section using any available technology.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-12**

##### **Exiting provider; advance notice required; liability for charges owed to other providers**

Sec. 12. (a) This section applies to a provider that holds a certificate of territorial authority to provide local exchange service in Indiana. If a provider:

- (1) decides to cease serving all or part of the provider's defined service area; or
- (2) plans to file for bankruptcy;

the provider shall provide at least sixty (60) days advance notice to the commission and each affected customer and wholesale provider.

(b) A notice described in subsection (a) must:

- (1) be submitted in the form and manner prescribed by the commission; and
- (2) include at least one (1) toll free customer service telephone number maintained by the provider to facilitate the continuation of service and the transition of customers to other providers.

(c) The exiting provider is liable for all charges owed to other providers and is responsible for any provider change charges.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-13**

##### **Relief from provider of last resort obligations; installation of facilities by another provider**

Sec. 13. (a) If the holder of a certificate of territorial authority to provide local exchange service installs facilities to provide telecommunications service, including local exchange service, in a defined geographic area and:

- (1) the holder is not the designated provider of last resort for the area; and
- (2) the designated provider of last resort for the area has not installed facilities to serve customers in the area;

the designated provider of last resort may petition the commission for an order relieving the designated provider of its obligations as the provider of last resort in the area.

(b) The commission shall relieve the petitioning provider from its obligations as the provider of last resort for the area described in subsection (a) and shall designate the holder making the installation under subsection (a) as the provider of last resort for the area if the commission determines that:

- (1) the petitioning provider does not have facilities in place to provide local exchange service to all customers in the area; and
- (2) the holder making the installation under subsection (a) has installed facilities adequate to provide local exchange service throughout the area.

The commission shall make the determinations required by this subsection not later than sixty (60) days after the date the petition is filed with the commission under subsection (a).

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-14**

##### **Notice of exiting provider; commission's appointment of successor provider; temporary exemption from certain requirements; state universal service fund support; transfer of customers**

Sec. 14. (a) Except as provided in IC 8-1-32.6-8 or section 16 of this chapter, if:

- (1) the commission receives notice of an exiting provider's decision to cease operation in all or part of the service area covered by the provider's certificate of territorial authority; and
- (2) there is not another provider that:
  - (A) holds a certificate of territorial authority in the area; and
  - (B) has facilities sufficient to provide basic telecommunications service in the area;

the commission shall conduct a formal proceeding to determine the successor provider for the area.

(b) After determining the successor provider for the affected area under subsection (a), the commission shall, if applicable, allow the following with respect to the successor provider:

- (1) A reasonable time, determined by the commission and in accordance with industry practices, in which to:
  - (A) modify, construct, or obtain the facilities; or
  - (B) deploy an approved alternative technology;necessary to serve the customers of the exiting provider.
- (2) A temporary exemption from any lawful obligation to unbundle the successor provider's network elements. The exemption under this subdivision shall continue for a period determined by the commission to be reasonably necessary to allow the successor provider to:
  - (A) modify, construct, or obtain the facilities; or
  - (B) deploy an alternative technology;that will allow the successor provider to serve the customers of the exiting provider.

- (3) A temporary exemption from any lawful obligation to provide telecommunications service for resale within the affected area. The exemption under this subdivision shall continue for a period determined by the commission to be reasonably necessary to allow the successor provider to:
  - (A) modify, construct, or obtain the facilities; or
  - (B) deploy an alternative technology;that will allow the successor provider to serve the customers of the exiting provider.

(c) The successor provider is entitled to obtain funding from a state universal service fund to support the provider's assumption of obligations as the provider of last resort for the area. This section does not prohibit a provider from voluntarily:

- (1) serving customers in the affected area; or
- (2) purchasing the facilities of the exiting provider.

(d) A customer within the defined geographic area to be served by the successor provider is considered to have applied for basic telecommunications service from the successor provider on the effective date of the commission's designation of the successor provider. Each right, privilege, and obligation applicable to customers of the successor provider applies to a customer transferred to the successor provider under this section. A customer transferred to the successor provider under this section is subject to the successor provider's terms of service as specified in an applicable tariff or contract. This section does not prohibit a customer from seeking, at any time, service from a provider other than the successor provider.

*As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-15**

##### **Provider's cessation of local exchange service or abandonment of facilities; commission's declaration of emergency; designation of successor provider**

Sec. 15. (a) The commission may, on its own motion or on the petition of an interested party, institute an expedited proceeding under this section if the commission determines that:

- (1) a facilities based local exchange carrier has a certificate of territorial authority to provide local exchange service in a defined geographic area;
- (2) there is not another provider that:
  - (A) holds a certificate of territorial authority in the area; and
  - (B) has facilities sufficient to provide local exchange service in the area; and
- (3) the facilities based local exchange carrier has:
  - (A) ceased providing local exchange service to the customers in the area; or
  - (B) abandoned the operation of the carrier's facilities in the area that are used to provide local exchange service.

(b) In a proceeding under this section, the commission may declare in accordance with IC 8-1-2-113 that an emergency exists and issue any order necessary to protect the health, safety, and welfare of affected customers and to expedite the restoration or continuation of local exchange service to the affected customers. An order issued under this subsection may:

- (1) provide for the temporary operation of the facilities based local exchange carrier's facilities by any provider, including a provider that has not been issued a certificate of territorial authority by the commission;
- (2) authorize one (1) or more third parties to enter the premises of any abandoned facilities; or
- (3) grant temporary waivers from quality of service requirements for any provider:
  - (A) providing service under subdivision (1); or

(B) designated as a successor provider by the commission under subsection (c).

(c) Except as provided in IC 8-1-32.6-8 or section 16 of this chapter, the commission may act under section 14 of this chapter to designate a successor provider in any proceeding under this section. *As added by P.L.27-2006, SEC.54.*

#### **IC 8-1-32.4-16**

##### **Exclusive service arrangements; relief from provider of last resort obligations**

Sec. 16. (a) If a provider, other than the incumbent local exchange carrier, operates under an arrangement by which the provider is the exclusive provider of basic telecommunications service in a particular geographic area, building, or group of residences and businesses, the incumbent local exchange carrier is relieved of any provider of last resort obligations that the incumbent local exchange carrier would ordinarily have with respect to the particular geographic area, building, or group of residences and buildings.

(b) If:

(1) a provider with an exclusive service arrangement described in subsection (a) decides to cease operations in all or part of the particular geographic area, building, or group of residences and buildings that the provider serves under the arrangement; and

(2) the incumbent local exchange carrier:

(A) has insufficient facilities to serve the affected customers of the exiting provider; and

(B) elects to purchase the facilities of the exiting provider; the incumbent local exchange carrier has twelve (12) months to make any modifications necessary to the purchased facilities to allow the incumbent local exchange carrier to serve the affected customers of the exiting provider. The incumbent local exchange carrier may apply to the commission for an extension of the period allowed under this subsection, and the commission shall grant the extension upon good cause shown by the incumbent local exchange carrier.

(c) If:

(1) a provider with an exclusive service arrangement described in subsection (a) decides to cease operations in all or part of the particular geographic area, building, or group of residences and buildings that the provider serves under the arrangement; and

(2) the incumbent local exchange carrier:

(A) has insufficient facilities to serve the affected customers of the exiting provider; and

(B) elects not to purchase the facilities of the exiting provider;

the incumbent local exchange carrier has twelve (12) months to deploy an approved alternative technology necessary to allow the incumbent local exchange carrier to serve the affected customers of the exiting provider. The incumbent local exchange carrier may apply to the commission for an extension of the period allowed under this subsection, and the commission shall grant the extension upon

good cause shown by the incumbent local exchange carrier.  
*As added by P.L.27-2006, SEC.54.*